PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re application of	Docket No: Q76546
Vincent MUNIERE	
Appln. No.: 10/634,766	Group Art Unit: 2617
Confirmation No.: 6869	Examiner: Kamran Afshar
Filed: August 6, 2003	

For: METHOD FOR ALLOCATING RESOURCES IN PACKET MODE IN A MOBILE RADIO SYSTEM

SUBMISSION OF APPEAL BRIEF

MAIL STOP APPEAL BRIEF - PATENTS
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Submitted herewith please find an Appeal Brief. The statutory fee of $540.00 is being remitted. The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,

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Date: May 5, 2011

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APPEAL BRIEF UNDER 37 C.F.R. § 41.37

MAIL STOP APPEAL BRIEF - PATENTS
Commissioner for Patents
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Alexandria, VA 22313-1450

Sir:

In accordance with the provisions of 37 C.F.R. § 41.37, Appellant submits the following:

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I. REAL PARTY IN INTEREST

The real party in interest is EVOLIUM S.A.S. having a business address of France, by virtue of an assignment executed by Vincent Muniere (Appellant, hereafter), on July 17, 2003, and recorded by the Assignment Branch of the U.S. Patent and Trademark Office on August 6, 2003, (at Reel 014418, Frame 0946).

II. RELATED APPEALS AND INTERFERENCES

To the best of the knowledge and belief of Appellant, Appellant's legal representatives, and the Assignee, there are no other appeals or interferences that will directly affect or be affected by the Board's decision in the present Appeal.

III. STATUS OF CLAIMS

Claims 2, 8-10, 16, 17, 23-25 and 34-36 are the claims pending in the present application, stand finally rejected and are all subject of this appeal.

IV. STATUS OF AMENDMENTS

No amendments were filed after the Final Office Action dated April 7, 2010.

V. SUMMARY OF THE CLAIMED SUBJECT MATTER

Independent claim 2

A method of allocating packet mode resources in a mobile radio system, said method comprising:

a mobile station (MS, FIGS. 2-4) sending to the network for signaling data transfer requirements, an EGPRS (Enhanced General Packet Radio Services) packet channel request, including cause data specifying signaling data transfer requirements (see page 15, line 32 to page 16, line 32).

Independent claim 16.

A mobile station comprising:

a module (MS, FIGS. 2-4) which, for signaling data transfer requests sends an EGPRS (Enhanced General Packet Radio Services) packet channel request message to the network, including cause data specifying signaling data transfer requirements (see page 15, line 32 to page 16, line 32).

Independent claim 17

A mobile radio network equipment comprising:

a module (BSS, FIGS. 2-4)which receives an EGPRS (Enhanced General Packet Radio Service) packet channel request by a mobile station for signaling data transfer requirements, including cause data specifying signaling data transfer requirements (see page 15, line 32 to page 16, line 32).

Dependent claims separately argued:

9. The method claimed in claim 8 wherein said signaling messages include a cell update message sent in the event of cell reselection during a current user data transfer (see page 17, line 35 to page 18, line 12).

10. The method claimed in claim 8 wherein said signaling messages include a paging response message in packet mode prior to a transfer of user data in the downlink direction (see page 17, line 35 to page 18, line 12).

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

The grounds of rejection to be reviewed, including the statute applied, the claims subject to each rejection and the references relied upon by the examiner are as follows:

Whether claims 2, 8-10, 16, 17, 23-25 and 34-36 are properly rejected under 35 U.S.C. § 102(e) as allegedly being anticipated by Landais (U.S. Patent Application Publication No. 2002/0080758).

VII. ARGUMENT

At least for the reasons discussed below, Appellant respectfully submits that the rejection of claims 2, 8-10, 16, 17, 23-25, and 34-36 on appeal are improper, and reversal of the rejection is requested. Appellant now turns to the rejection at issue.

LANDAIS DOES NOT TEACH OR SUGGEST A MOBILE STATION SENDING TO THE NETWORK, FOR SIGNALING DATA TRANSFER REQUIREMENTS, AN EGPRS (ENHANCED GENERAL PACKET RADIO SERVICE) PACKET CHANNEL REQUEST

Claim 2 is directed to a method of allocating packet mode resources in a mobile radio system that includes a mobile station sending to the network, for signaling data transfer requirements, an EGPRS (Enhanced General Packet Radio Service) packet channel request. In the Office Action dated April 7, 2010, the Examiner rejects these features of claim 1 as being allegedly anticipated by Landais, particularly in paragraphs [18], [20], [23], [29] and [41]. Appellant respectfully disagrees for at least the following reasons.

A. Discussion Of The Reference

Landais is directed to packet mode services including General Packet Radio Service (GPRS) in the case of Global System for Mobile communications (GSM). In the background section, Landais discloses that signaling protocols are provided for radio resource (RR) management, mobile management (MM), session management (SM), logical link (LL) control, etc. (paragraph [18]). Moreover, Landais discloses, in packet mode, a mobile station can be either: in a packet transfer mode in which resources are assigned temporarily, where there is

actually data to be transmitted during a call, the resources forming a temporary block flow (TBF), or in a packet idle mode, in which no TBF is set up (paragraph [19]-[21]). Furthermore, Landais discloses that it is possible to use either the one-phase access method or the two-phase access method to initialize transfer of the data by a mobile station or to set up a TBF at the imitative of the mobile station (paragraph [23]).

B. Sending to the network, for signaling data transfer requirements, an EGPRS (Enhanced General Packet Radio Service) packet channel request is NOT anticipated by Landais.

Claim 2 recites, *inter alia*, "a mobile station sending to the network, for signaling data transfer requirements, an EGPRS (Enhanced General Packet Radio Service) packet channel request, including cause data specifying signaling data transfer requirements." Importantly, according to these features of claim 2, the mobile station sends (1) an EGPRS packet channel request for signaling data transfer and (2) the EGPRS packet channel request includes cause data specifying signaling data transfer requirement. As a result, in order to anticipate the claimed features of claim 2, Landais has to show an EGPRS packet channel request for signaling data transfer including cause data specifying signaling data transfer requirement. However, Landais discloses sending a Packet Channel Request and **NOT** an EGPRS packet channel request for signaling data transfer.

For instance, in paragraphs [28] and [29], Landais discloses that to support different requirements in terms of services, different types of mobile stations are provided, identified by corresponding information, referred to as classmark information and radio access capability. Further, Landais discloses that these different requirements in terms of services correspond to

characteristics such as, the ability of the mobile station to support the enhanced generated packet radio service (EGPRS), which improves bit rate performance by improving the spectral efficiency of the modulation. Moreover, in paragraph [41], Landais discloses that a first option is for the network to request the radio access capacity information of the mobile station in the Packet Uplink Assignment message following on from the reception of a (Packet) Channel Request message. In the cited portions of the Landais discussed above, there is no teaching or suggestion of a mobile station sending to the network, for signaling data transfer requirements, an EGPRS (Enhanced General Packet Radio Service) packet channel request, including cause data specifying signaling data transfer requirements."

In particular, although Landais mentions signaling protocol in paragraph [18] and EGPRS supported mobile station in paragraph [29], Landais does not teach or suggest any correspondence between the signaling protocol and the EGPRS supported mobile station. *More importantly*, Landais is completely silent about sending an EGPRS (Enhanced General Packet Radio Service) packet channel request for signaling data transfer requirements.

Furthermore, while Landais discloses one-phase access method or a two-phase access (paragraph [23]), Landais does not teach or suggest an EGPRS (Enhanced General Packet Radio Service) packet channel request including the cause data specifying signaling data transfer requirements.

In addition, the Examiner contends, in page 3, lines 5-9 of the Office Action dated April 7, 2010, that:

> It is noted that Examiner merely using the page 270, of Document 3GPP TS 04.60 where more detail EGPRS packet

channel request as disclosed to indicate that the Packet Channel Request message in Landais is inherently the EGPRS packet channel request message, so as to accommodate the requirements of EGPRS.

Appellant respectfully disagrees for at least the following reasons.

C. Document 3GPP TS 04.60 discloses using a Packet Channel Request and NOT an EGPRS Packet Channel Request for signaling data transfer requirements.

First, Appellant submit that although the document 3GPP TS 04.60 V8.6.0 (2000-10) cited in Landais and used by the Examiner describes the use of an EGPRS Packet Channel Request, this document does not teach or suggest sending an EGPRS (Enhanced General Packet Radio Service) packet channel request for signaling data transfer requirements. That is, this document only discloses that a mobile station supporting the EGPRS Packet Channel Request sends to the network, for signaling data transfer requirements, a Packet Channel Request (i.e. not an EGPRS Packet Channel Request). Specifically, Appellant respectfully directs the Board to page 148 of the above noted document which discloses that the EGPRS PACKET CHANNEL REQUEST message is sent by EGPRS capable MSs in cells supporting EGPRS and using 11 bit ACCESS BURST TYPE, where the EGPRS PACKET CHANNEL REQUEST message is sent to perform EGPRS one-phase access request, EGPRS short access request or EGPRS two-phase access request and for all other purposes (page response, cell update etc.) the standard PACKET CHANNEL REQUEST message shall be used (see Section 11.2.5). That is, for signaling data transfer requirements such as page response, cell update etc., the above document clearly discloses using a Packet Channel Request and **NOT** an EGPRS Packet Channel Request.

Similarly, Appellant now respectfully directs the Board to page 41 of the above noted document, which discloses the use of the standard Packet Channel Request message for signaling data transfer requirements.

Second, Appellant respectfully disagree with the Examiner's assertion that the Packet Channel Request message in Landais is inherently the EGPRS Packet Channel Request message.

Appellant respectfully submit that the doctrine of inherency allows for "modest flexibility in the rule that 'anticipation' requires that every element of the claims appear in a single reference." *Continental Can Co. v. Monsanto Co.*, 948 F.2d 1264, 1269 (Fed. Cir. 1991). Although extrinsic evidence may be consulted regarding an asserted inherent characteristic, "[s]uch evidence must make clear that the missing descriptive matter is ***necessarily*** present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill." *Continental Can Co. v. Monsanto Co.*, 948 F.2d 1264, 1268 (emphasis added). Moreover, inherency "may not be established by probabilities or possibilities." *Continental Can Co. v. Monsanto Co.*, 948 F.2d 1264, 1269. "The mere fact that a certain thing may result from a given set of circumstances is not sufficient." *Continental Can Co. v. Monsanto Co.*, 948 F.2d 1264, 1269.

If a structure in a cited reference does not expressly disclose a claimed feature, but absolutely must include that claimed feature in order to function properly, then that feature is deemed to be inherently disclosed. *See, e.g., W.L. Gore*, 721 F.2d at 1554 ("[W]e are not persuaded that the "effect" of the processes disclosed in Smith and Sumitomo, an "effect" undisclosed in those patents, would be *always* to inherently produce or be seen always to produce products meeting all of

the claim limitations.") In other words, if there are two or more possibilities with respect to the non-disclosed feature, then the non-disclosed feature is not inherent.

Here, it is clear that there are two possible types of request disclosed in the 3GPP TS 04.60 V8.6.0 (2000-10) document cited in Landais, (1) Packet Channel Request and (2) an EGPRS Packet Channel Request. Moreover, as discussed above this document clearly states that for all other purposes (including signaling data transfers i.e., page response, cell update etc.) the standard PACKET CHANNEL REQUEST message shall be used (see Section 11.2.5 and page 41).

Accordingly, Appellant submit that since it is NOT necessary that the Packet Channel Request of Landais must *absolutely* be an EGPRS Packet Channel Request. In fact, these are two different type of packet request and the 3GPP TS 04.60 V8.6.0 (2000-10) document discloses using the Packet Channel Request. Therefore, the Packet Channel Request message in Landais is NOT inherently the EGPRS Packet Channel Request message. More importantly, Landais does not teach or suggest "a mobile station sending to the network, for signaling data transfer requirements, an EGPRS (Enhanced General Packet Radio Service) packet channel request, including cause data specifying signaling data transfer requirements."

Lastly, in page 3, section 2 of the Office Action dated April 7, 2010, the Examiner alleges that the features relied upon by the Applicant are not recited in the rejected claim. However, Appellant respectfully submits that, in the remarks filed on February 22, 2010, Appellant only argued that the reference does not teach or suggest the claimed feature of claim 2 - particularly - a mobile station sending to the network, for signaling data transfer requirements, an EGPRS (Enhanced General Packet Radio Service) packet channel request, including cause data

specifying signaling data transfer requirements, but never stated that the reference failed to show the disclosure of page 8, line 17- page 13, line 9 (parts of the background of the invention section) of the originally filed specification (See page 3, lines 7-14 of the remarks filed February 22, 2010). Further, Appellant notes that page 8, line 17- page 13, line 9 of the originally filed specification was *merely* cited to show the problems associated in the conventional systems and how the inventors of the claimed invention provided a method for solving these problems by allocating packet mode resources in a mobile radio system, said method, as recited in claim 2, comprising: a mobile station sending to the network, for signaling data transfer requirements, an EGPRS (Enhanced General Packet Radio Service) packet channel request, including cause data specifying signaling data transfer requirements.

For at least the reasons discussed above, Appellant respectfully submit that claim 2 is patentable.

For reasons similar to those discussed above, Appellant respectfully submits that claims 16 and 17 that recite features similar to claim 2 are also patentable.

Claims 8-10, 23-25 and 34-36, which depend from claims 2, 16 or 17, are patentable at least by virtue of their dependencies and for the additional features recited therein.

Claim 9 recites "said signaling messages include a cell update message sent in the event of cell reselection during a current user data transfer" and claim 10 recites, "said signaling messages include a paging response message in packet mode prior to a transfer of user data in the downlink direction." Appellant respectfully submits that Landais does not teach or suggest these features of claims 9 and 10 for at least the following reasons.

As discussed above, page 148 of the 3GPP TS 04.60 V8.6.0 (2000-10) document cited in Landais discloses that the EGPRS PACKET CHANNEL REQUEST message is sent by EGPRS capable MSs in cells supporting EGPRS and using 11 bit ACCESS BURST TYPE, where the EGPRS PACKET CHANNEL REQUEST message is sent to perform EGPRS one-phase access request, EGPRS short access request or EGPRS two-phase access request and for all other purposes (page response, cell update etc.) the standard PACKET CHANNEL REQUEST message shall be used (see Section 11.2.5). Therefore, for signaling data transfer requirements such as page response, cell update etc., the above document clearly discloses using a Packet Channel Request and **NOT** an EGPRS Packet Channel Request. Similarly, Appellant now respectfully directs the Board to page 41 of the above noted document, which discloses the use of the standard Packet Channel Request message for signaling data transfer requirements. Therefore, Landais does not teach or suggest the features of claims 9 and 10.

For all of the foregoing reasons, Appellant respectfully submits that claims 2, 8-10, 16, 17, 23-25, and 34-36 are patentable over the cited reference.

VIII. CONCLUSION

The statutory fee (37 C.F.R. §41.37(a) and 1.17(c)) is being remitted. The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,

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CLAIMS APPENDIX

CLAIMS 2, 8-10, 16, 17, 23-25 and 34-36 ON APPEAL:

1. (canceled).

2. A method of allocating packet mode resources in a mobile radio system, said method comprising:

a mobile station sending to the network for signaling data transfer requirements, an EGPRS (Enhanced General Packet Radio Services) packet channel request

including cause data specifying signaling data transfer requirements .

3-7. (canceled).

8. The method according to claim 2, wherein said signaling data transfer requirements include requirements for transfer of signaling messages in accordance with a mobility management protocol.

9. The method claimed in claim 8 wherein said signaling messages include a cell update message sent in the event of cell reselection during a current user data transfer.

10. The method claimed in claim 8 wherein said signaling messages include a paging response message in packet mode prior to a transfer of user data in the downlink direction.

11-15. (canceled).

16. A mobile station comprising:

a module which, for signaling data transfer requests sends an EGPRS (Enhanced General Packet Radio Services) packet channel request message to the network,

including cause data specifying signaling data transfer requirements.

17. A mobile radio network equipment comprising:

a module which receives an EGPRS (Enhanced General Packet Radio Service) packet channel request by a mobile station for signaling data transfer requirements

including cause data specifying signaling data transfer requirements.

18-22. (canceled).

23. The mobile station claimed in claim 16 wherein said signaling data transfer requirements include requirements for transfer of signaling messages in accordance with a mobility management protocol.

24. The mobile station claimed in claim 23 wherein said signaling messages include a cell update message sent in the event of cell reselection during a current user data transfer.

25. The mobile station claimed in claim 23 wherein said signaling messages include a paging response message in packet mode prior to a transfer of user data in the downlink direction.

26-33. (canceled).

34. The mobile radio network equipment claimed in claim 17, wherein said signaling data transfer requirements include requirements for transfer of signaling messages in accordance with a mobility management protocol.

35. The mobile radio network equipment claimed in claim 34, wherein said signaling messages include a cell update message sent in the event of cell reselection during a current user data transfer.

36. The mobile radio network equipment claimed in claim 34, wherein said signaling messages include a paging response message in packet mode prior to a transfer of user data in the downlink direction.

37-40. (canceled).

EVIDENCE APPENDIX

NONE

RELATED PROCEEDINGS APPENDIX

NONE